

**Local Union #1010, United Furniture Workers of America, AFL-CIO (Leggett & Platt, Inc.) and Gaspar Herrero. Case 21-CB-7314**

April 30, 1982

**DECISION AND ORDER**

BY CHAIRMAN VAN DE WATER AND  
MEMBERS FANNING AND ZIMMERMAN

On December 21, 1981, Administrative Law Judge Harold A. Kennedy issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Local Union #1010, United Furniture Workers of America, AFL-CIO, Huntington Park, California, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

<sup>1</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

**APPENDIX**

**NOTICE TO EMPLOYEES AND MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT fail or refuse to fairly represent any employees represented by us or arbitrarily fail or refuse to process any employee's grievance on a fair basis.

WE WILL NOT cause or threaten to cause an employer to discharge or otherwise discriminate against employees because they engaged in protected concerted activities.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their right to engage in or refrain from engaging in concerted activities guaranteed by Section 7 of the Act.

WE WILL request Leggett & Platt, Inc., to reinstate Gaspar Herrero to his former position or, if it no longer exists, to a substantially equivalent position. If Leggett & Platt, Inc., refuses to reinstate him, WE WILL ask it to consider a grievance over his April 2, 1980, discharge and thereafter pursue his grievance in good faith with all due diligence.

WE WILL make Gaspar Herrero whole for any loss of earnings he may have suffered as a result of his discharge by Leggett & Platt, Inc., from April 2, 1980, until such time as he is reinstated by Leggett & Platt, Inc., or obtains other substantially equivalent employment, or secures consideration of his grievance by Leggett & Platt, Inc., and thereafter pursues it with all due diligence, whichever is sooner, together with interest.

LOCAL UNION #1010, UNITED FURNITURE WORKERS OF AMERICA, AFL-CIO

**DECISION**

HAROLD A. KENNEDY, Administrative Law Judge: This proceeding was initiated by a charge filed by an individual named Gaspar Herrero who had been, prior to his discharge, an employee of Leggett & Platt, Inc., of South Gate, California. The charge, filed on May 6, 1980, with the Regional Director for Region 21 of the National Labor Relations Board, resulted in the issuance of a complaint on June 30, 1980, charging Respondent Local Union #1010, United Furniture Workers of America, AFL-CIO, with violating Section 8(b)(1)(A)<sup>1</sup> of the National Labor Relations Act, as amended by:

1. Failing and refusing to process to arbitration a grievance Herrero filed following his discharge by Leggett & Platt because he "engaged in union or other protected concerted activities for the purposes of collective

<sup>1</sup> Sec. 8(b)(1)(A) of the Act makes it an unfair labor practice for a labor organization or its agents "(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

bargaining or other mutual aid or protection" and "because of arbitrary, irrelevant, and invidious consideration."

2. Threatening, on or about November 21, 1979, through Apolinar Espudo, employees to "cause the Employer to discharge employees because they had engaged in union or other protected concerted activities."

3. Stating, on or about April 22, 1980, through Espudo, in a telephone conversation "to an employee that it would take no further action on his grievance because he had engaged in union or other protected concerted activities."

The case was heard in Los Angeles, California, on February 5, 6, 9, 24, 25, 26, and 27, 1981.

Jurisdiction is not in issue, and many of the facts are not in dispute. Respondent's answer admits that:

1. Respondent is a labor organization as defined in Section 2(5) of the Act.<sup>2</sup>

2. Apolinar Espudo is a vice president of the International Union, United Furniture Workers of America, AFL-CIO, and acts as an agent on behalf of Respondent within the meaning of Section 2(13) of the Act.

3. Elizario Fresquez is secretary-treasurer of Respondent and acts as an agent of Respondent within the meaning of the Act.

4. All employees employed by the Employer at its South Gate Innerspring Operations, excluding administrative, office, professional, clerical and supervisory personnel, including superintendents, foremen, and assistant foremen, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.<sup>3</sup>

5. Respondent is the collective-bargaining representative of the above-described unit and that on or about May 10, 1979, entered into a collective-bargaining agreement with the Employer which would remain in effect until May 7, 1982, and from year to year thereafter unless appropriate notice should be given.

6. Herrero, an employee in the above-described unit, was discharged on or about April 2, 1980.

7. Herrero filed with Respondent a written grievance concerning his discharge on or about April 7, 1980.

At the hearing it was stipulated that:

Leggett & Platt, Inc., is a Missouri corporation engaged in the business of manufacturing component parts for furniture in South Gate, California.

During the past 12-month period, it purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of California. During the past 12-month period, it sold and shipped goods valued in excess of \$50,000 to customers located outside the State of California.

Also received by stipulation were three collective-bargaining agreements executed by Respondent and the Em-

ployer for the periods January 10, 1977, through January 20, 1980 (G.C. Exh. 3(a)), and May 7, 1979, through May 7, 1982 (G.C. Exh. 3(b)).<sup>4</sup>

Eleven witnesses testified, five for the General Counsel, three for Respondent and three for the Charging Party. Two of the witnesses, Herrero and Espudo, were recalled to testify again. The hearing was complicated and protracted in part due to the fact that most of the witnesses required an interpreter. Much of the trial was concerned with the following matters or events:

1. Respondent Union, by Espudo, and Leggett & Platt, by Robert (Bob) Minski, executed a new collective-bargaining agreement (G.C. Exh. 3(b)) in May 1979, although a previously executed contract (G.C. Exh. 3(a)) was not due to expire until 1980.

2. Chief shop steward Francisco Andrade informed a group of Leggett & Platt employees on or about November 11, 1979, that he had learned that the Union and the Company had executed a new contract in May 1979.

3. A union meeting held on November 20, 1979, at which chief shop steward Andrade and other Leggett & Platt employees questioned Espudo in a hostile manner about taking it upon himself to sign a collective-bargaining agreement with the Company in the previous May.

4. On November 21, 1979, the day after the angry union meeting, Espudo visits the Firestone branch of Leggett & Platt and spoke to Herrero and another employee, Lorenzo Heredia.<sup>5</sup>

5. On January 9, 1980, Herrero was given a second warning for tardiness.

6. At the February 20, 1980, union meeting a Leggett & Platt employees' petition protesting the May 1979 contract was presented to Espudo.

7. On or about April 2, 1980, Herrero was discharged by Leggett & Platt, and shop steward Andrade, after telephoning union official Fresquez, filed a grievance with the Company.

8. On or about April 14, 1980, the union executive board met and, while authorizing Espudo to meet with the Company concerning Herrero's grievance, voted against arbitration.

9. On or about April 15, 1980, Espudo, accompanied by Union Secretary-Treasurer Fresquez, shop steward Andrade, and Herrero, met with Leggett & Platt officials and discussed Herrero's grievance in English. Company official DeWilde stated that he would consider the matter and advise the Union of his decision.

10. On April 18, 1980, DeWilde sent a memo to the Union advising that it will not reinstate Herrero (Resp. Exh. 9). (Herrero heard of the decision later when he talked to Espudo on or about April 22.)

*Gaspar Herrero* was a janitor at Leggett & Platt's Firestone plant from May 14, 1979, until April 2, 1980, the

<sup>2</sup> The complaint alleges that Respondent Local #1010 and the International Union, United Furniture Workers of America, AFL-CIO, are both labor organizations under the Act.

<sup>3</sup> Members of Local #1010 worked in at least two branch plants of Leggett & Platt, one on Firestone Boulevard and another one on Nadeau Avenue. Gaspar Herrero was employed at the Firestone branch. Espudo stated that Leggett & Platt had "approximately five shops in this area" and that the union had "represented Leggett and Platt in one shop or the other for the last 10 years."

<sup>4</sup> A Spanish version of the 1979-1982 agreement (G.C. Exh. 3(c)) was also received by stipulation.

<sup>5</sup> Espudo conceded he could have gone to the Firestone plant that day but denied that he spoke to Heredia in a hostile manner or threatened to speak to Leggett & Platt official Bob Minski as Andrade, Herrero, and Heredia testified. After considering the whole record, I am persuaded that Espudo did go to the plant (accompanied by union secretary Cynthia Restrepo) and, after speaking to Herrero and Heredia, threatened to speak to Minski about the "troublemakers" at the plant.

date of his discharge. Up to the time of his discharge he had been a member of Local #1010.

Herrero testified that he had received two warnings for arriving late to work; one on October 29, 1979, and one on January 9, 1980. He refused to sign the second warning, which included a 3-day suspension, because he did not feel it was correct.<sup>6</sup> The second warning also informed him that he would be terminated if he were late again. He testified that he had been late several times before and after the second warning. He said that whenever he was late he would telephone the Company. On some days his supervisor, Brent Mantooth, would allow him to work after hours. He recalled one occasion after receiving the warnings that he was very late arriving at work but did not receive a reprimand.

In November 1979, Herrero and other employees at Leggett & Platt learned that a new contract had been signed with the Company several months before the existing contract was to expire. On November 11 or 12, a number of employees gathered during their lunchbreak to discuss the new contract. Francisco Andrade, the chief shop steward for Local #1010, told the employees that he was surprised to learn that a new contract had been signed in May 1979 even though the old contract would not expire until December 1979. Approximately 20 employees met again after work to discuss the new contract.

Herrero testified that he attended a regular union meeting on or about November 20 at Local #1010's office with 20 to 25 other workers. Respondent's business manager and chief executive, Apolinar Espudo, and other union officials were there. Shop steward Andrade asked Espudo why a new contract had been signed before the old contract had expired and why a negotiating committee had not participated in the contract discussion. Espudo replied that at the time of the negotiations there had been a danger that Leggett & Platt would close the plant permanently and that only a few employees worked there at the time. Several employees at the meeting contradicted Espudo. Another employee, Lorenzo Heredia, "reproached" Espudo for not having obtained higher wages for the employees. Espudo responded sarcastically, "Well, I'm going to get them for you." Herrero indicated the criticism made Espudo uncomfortable and that Espudo told them they did not have anything to complain about as they were "illegals."

Herrero testified that on the day after the November union meeting Espudo visited the plant where he worked, accompanied by Cynthia Restrepo, the recording secretary for Local #1010. Espudo approached Herrero carrying a booklet and asked him where Heredia could be found. He then turned to Heredia, who was nearby, and stated, "Let's see if you have the same balls as that last night that you want to yell at me at the assembly so that now you're going to be without work you can go request it from me at the office." According to Herrero, Espudo then turned back to him and told him that he (Herrero) owed him favors and was one of the troublemakers. Espudo told him he was there to

speak to Bob Minski, "boss of the whole factory," in order to have the troublemakers fired. Herrero then saw him make two marks in the booklet which contained his name, Heredia's, and others.<sup>7</sup>

Herrero testified that there were no union meetings in either December or January. However, in January employees met with Andrade to discuss ways to cancel the contract. They decided to draw up a petition to take to Espudo in an effort to persuade him to cancel the contract. The petition was drawn up in Spanish. At another meeting of employees, Andrade gave the petition to Herrero, who read it aloud to the employees and then passed it around for them to sign.<sup>8</sup> At the next union meeting in February 1980, which was attended by the majority of workers who signed the petition, Espudo, and other union officials, Andrade handed the petition to Espudo. Espudo replied that nothing could be done about the contract. He twice commented that someone who had been his friend was responsible for the contract problems. Herrero asked him to name the person he was referring to, and Espudo named Herrero.

On April 2, 1980, Herrero was discharged from his job at Leggett & Platt by Charles "Chuck" DeWilde, plant manager at the Company's Firestone facility. On that morning Herrero had arrived early but did not clock in until after 7 a.m., the starting time, as he had done on other mornings. He testified that he contacted shop steward Andrade the same day and that Andrade wrote up a grievance. Herrero stated that sometime after April 2 he called the Union and talked to the Union's secretary-treasurer, Elisario Fresquez, who told him he already knew about Herrero's discharge. Fresquez told Herrero that he and Espudo would "see what could be done." Andrade handed Herrero's grievance to Supervisor Brent Mantooth at the plant. Soon thereafter, Herrero met with Espudo at the union office to discuss his complaint. Herrero said he told Espudo that there were other workers who had been late as often as he had and had not been disciplined. He also stated that he gave Espudo the names of the employees who were late. Espudo told him he would be in contact with the Company.

On or about April 16 Respondent Union met with company representatives to discuss Herrero's grievance. Present at the meeting were Herrero, Andrade Espudo, Fresquez, DeWilde, Mantooth, and a company official named Adrian, who acted as an interpreter. Before the meeting Espudo and Herrero discussed the defenses that Espudo was to make on behalf of Herrero. Herrero said he had told Espudo that he had been a good worker for the Company, that other employees had also been tardy,

<sup>7</sup> Espudo ultimately conceded that he may have been at the plant that day but denied, equivocally, making any threats, stating that he did not use "those particular words that were said here." I credit the testimony of Herrero, who was corroborated by other employee witnesses, over that given by Espudo.

<sup>8</sup> G.C. Exh. 6(a) is a copy of the original petition bearing signatures of employees who worked at the Leggett & Platt plant located on Firestone Boulevard. An English translation of the petition is in evidence as G.C. Exh. 6(b). Leggett & Platt employees working the Nadeau plant also signed the petition (Resp. Exh. 11). There were three Leggett & Platt branches at the time of the hearing but four in February 1980, Espudo said. "One was on Florence and McKinley, the other one on Nadeau, the other one on Firestone, the other one on Azusa."

<sup>6</sup> The second warning (G.C. Exh. 4(b)), stated that Herrero was late one-half hour on January 2, 1-1/2 hours on January 5, and 1-1/4 hours on January 9, 1980.

and that the bus transportation that he used was not always reliable. Herrero also thought he had told Espudo that he would sometimes arrive too early to punch in and would thereafter forget to clock in until after the starting time. Herrero could not be sure that Espudo presented his defenses at the meeting with the company representatives as he did not understand the English spoken. Herrero stated that he spoke with Andrade after the meeting, but Andrade, like himself, did not understand English. On or about April 22, Herrero called Espudo and learned that DeWilde had decided not to reinstate him. Herrero said that when he reminded Espudo of his pledge to go to arbitration Espudo replied that he would not do so because Herrero had caused trouble over the contract he had signed and he did not want to use the Union's money on Herrero.

Herrero testified that before going to work for Leggett & Platt he had been employed at Inter-Royal and later by Local #1010 as a painter. Herrero indicated that before the dispute developed in November 1979 over the new contract he had helped the union in its organizing activities. Also, he said a union election had taken place in April 1979, and that he had campaigned for a Katrina Vasquez, a candidate for the treasurer's position, in opposition to a candidate favored by Espudo.<sup>9</sup>

*Francisco Andrade* works as a shipping department employee at the Leggett & Platt's Firestone plant. He began working there in May 1978 and was currently driving a truck for the Company. He is a shop steward for Local #1010.

He testified that he asked Espudo and Elisario Resquez sometime in October or November 1979 for a copy of the contract. He received copies of the contract sometime later and distributed them to the other employees. He became aware after reading it that it was a new contract because it had a new expiration date on it. Other workers asked him why there was a new contract since the old one had not yet expired. He and the other employees decided to meet after work to discuss the "situation."

Andrade testified that he brought up the subject of the contract at the Union's November 1979 meeting. Espudo told the employees that he had signed the contract alone because the Company was about to close the plant. Espudo told Heredia that he would get Heredia higher wages but stated that the employees had "nothing to claim as they were all illegal." Andrade testified that he saw Espudo the following day at the plant and that Espudo told him he had come to talk to Heredia to "see if now he has got the pants to yell at me like he yelled at me at the meeting." Andrade testified that Espudo said he planned to talk to Company President Bob Minski about having the employees who were causing him problems discharged.

Andrade testified that in February or March he talked with other employees in a liquor store parking lot.<sup>10</sup> A

<sup>9</sup> Herrero stated he and others at Leggett & Platt had also filed charges with the International Union against Espudo for misconduct in office but there had been no "positive results."

<sup>10</sup> Andrade was a credible witness but was uncertain about dates. His recollection as to when certain events occurred conflicted with the testimony of other witnesses.

petition demanding that the contract be renegotiated and be voted on was prepared and, after Herrero had read it to them, signed by the employees. Andrade said he made several copies; a copy was sent to the president of the International, and a copy was sent to the president of the executive board of Local #1010. Thereafter, 20 or 25 employees attended the regular union meeting (held in March he thought) at which the petition was presented to Espudo. Andrade testified that Espudo accused Herrero of betraying his friendship by his participation in the contract protest.

Herrero reported his discharge to Andrade on the day it occurred. They both concluded, Andrade said, that the Company was discriminating against Herrero as there were others who would arrive "pretty late." Andrade then called the Union and spoke to Fresquez, who told him he could file a grievance. The grievance was filed the next day, he thought. Andrade stated that he did not remember talking again to Herrero or to the Company before filing the grievance.

The Union met with the Company to discuss the grievance shortly thereafter. Before the meeting, Espudo told Andrade that he planned to tell the Company about Herrero's transportation problems. Andrade testified that he told Espudo that there were other employees who had been late without being disciplined. Andrade attended the meeting but did not understand what was being said. After Herrero learned that the Company would not take Herrero back, Andrade went to the union office with Herrero to ask Espudo to take the case to arbitration. Fresquez told Herrero to come back at another time to speak to Espudo, who was not there at the time.

*Lorenzo Heredia* testified that he worked at Leggett & Platt between May 23, 1979, and February 1980. He said he was a machine operator and a member of Local #1010 while employed by the Company. He stated that he was at the November 1979 union meeting when Espudo was questioned about the new contract he had signed. Heredia said he asked Espudo why he had not obtained higher wages, and Espudo answered, in a mocking manner, that he would get Heredia a raise "only because it is you." Espudo said lastly, "What are you arguing for; you are illegal."

Heredia stated that the day after the union meeting, November 21, 1979, Espudo came to the plant with a secretary and spoke to him in a hostile manner regarding the previous night's meeting. Espudo challenged Heredia to speak to him again the way he had at the meeting. Heredia continued:

After he told me if I had the same balls as the night before to yell at the assembly, that is when he said, you are creating a lot of problems. I am going to talk to Bob Minski to fire you, and that is then he addressed himself to Mr. Herrero.

*Luis Barquero* has been working for Leggett & Platt since October 9, 1979, in the maintenance department. His work hours are from 7 a.m. to 3:30 p.m., and his supervisor is John Kyger. Barquero testified that he received one written warning for being late, but that he had been late both before and after the warning without

being reprimanded. He stated he was present at the parking lot meeting when the employees met to discuss the contract. He said they agreed to draw up a petition which they signed about a month later at the parking lot. According to Barquero, the contents of the petition reflected the opinion that the contract was invalid because it was signed solely by Espudo and opinion that the contract was invalid because it was signed solely by Espudo and without the employees' knowledge. Barquero testified that he was at the union meeting when Espudo accused Herrero as being a friend but one "amongst a few" who was causing trouble. Barquero said that Espudo told the employees not to be influenced by the few employees who were "changing their thinking."<sup>11</sup>

Union Vice President Apolimar "Pino" Espudo testified that he became aware of Herrero's grievance 3 or 4 days after Herrero was terminated, around April 7. He said he told Fresquez to investigate the matter; Fresquez thereafter reported that he had been in contact with the Company, shop steward Andrade, and Herrero in an effort to get Herrero reinstated. Espudo stated that Fresquez secured company records pertaining to Herrero's work record and was told that the Company would send the Union an answer to its grievance. A few days later the Union's executive board met and discussed Herrero's discharge. The board approved a motion not to take the grievance to arbitration. Espudo said he had recommended against arbitration. According to Espudo, the board's decision took into account Herrero's previous work record at Inter-Royal, where he worked before being employed at Leggett & Platt. The executive board authorized Espudo only to meet with the Company and attempt to persuade it to reinstate Herrero.<sup>12</sup>

A day or so after the executive board meeting, around April 15, Espudo, Fresquez, Andrade, and Herrero met with Chuck DeWilde and other company representatives to discuss the grievance filed on behalf of Herrero. Before the meeting began Espudo asked Herrero why he had been late, if he had been, and if there were others who had been late without being disciplined. Herrero told Espudo of his transportation problems and about the fact that he sometimes arrived early but failed to clock in until after starting time. Espudo stated that Herrero did not know about other employees being late and would "check."<sup>13</sup> Espudo testified that he told the Company that Herrero was a good worker and of Herrero's transportation problems. He said he pointed out to the Company that it had trained him and that it should not waste his talents; also, that Herrero finished his tasks and that Herrero's job did not require that he be there at a particular time in order for other employees to finish their

work. Espudo conceded that he did not mention that other employees may have been late also. Espudo testified that the Company commented at the meeting that Herrero had already been given a second chance—i.e., the second warning and suspension and that Herrero was then late again.

Espudo said he told Herrero of the Company's decision not to reinstate him when they were together in the union hall. (They could have discussed it over the phone, Espudo said, but he did not remember it.) Espudo said he told Herrero that he "did not believe that we had enough to win an arbitration."<sup>14</sup> Herrero replied to Espudo that he felt the Union should try to find him another job. Espudo said he tried to find a job for Herrero but he conceded he did not refer him to any employer after the termination by Leggett & Platt.

Espudo said he attended the November 1979 union meeting at which the employees first expressed their disagreement with the new agreement he had signed with Leggett & Platt. He stated that the employees were primarily interested in obtaining higher wages and that he told them he would try to have the contract reopened. He disputed the testimony that Heredia spoke to him at that meeting. Espudo said he recommended that a negotiating committee be formed. A committee was selected in early 1980, he said, but he claimed he could not get them to meet with him. He denied saying that he would not help the employees as long as Andrade was shop steward.<sup>15</sup> He did indicate that he had explained to the employee union members that Andrade, being a truck-driver, was not always in the shop and "they should look for somebody either as an assistant or a chief steward" who could speak better English. Espudo said the contract he signed for the employees in May 1979 provided for a raise, but that after the petition was filed he was instrumental in getting the Company to amend the contract so as to provide for an additional wage increase in the second and third year of the contract.

Espudo stated that at the February 1980 meeting Andrade and the employees presented him with the petition. He denied accusing Herrero of being behind the protest.<sup>16</sup> Espudo said he could have gone to the plant the day after the November 20 union meeting, but he denied addressing Heredia in a hostile manner. He indicated that if he were there it would have been to obtain support for a strike that was occurring at that time at another plant. He denied that he threatened Heredia with the loss of his job or that he knew Leggett & Platt official Bob Minski well enough to ask him to fire employees for union activities.<sup>17</sup>

<sup>11</sup> Leggett & Platt issued Barquero a warning after he testified for Herrero at an unemployment hearing following Herrero's termination. And from the testimony of the Company's Firestone branch manager, Chuck DeWilde, it was apparent that the Company suspended Barquero after he testified in this proceeding.

<sup>12</sup> Espudo claimed Herrero had filed a grievance in connection with his earlier employment at Inter-Royal. Herrero denied it and Respondent did not produce any record of such grievance.

<sup>13</sup> Espudo testified that Herrero did not give him any names until sometime in April after the meeting was held with company representatives. He later testified that Herrero did not give him names until sometime in May.

<sup>14</sup> According to Herrero, arbitrations are expensive and Local #1010 "at that point was not in the best of economic positions."

<sup>15</sup> Uvaldo Soto Najera, a credible witness, testified that Espudo came to the Leggett & Platt Firestone branch where Najera was employed and spoke to him about organizing a new negotiating committee. According to Najera, when he said he would speak to shop Steward Andrade about the matter, Espudo replied that he (Espudo) did not recognize Andrade as the shop steward.

<sup>16</sup> Espudo claimed that his relations with Herrero was "great" up until after Herrero was discharged by Leggett & Platt.

<sup>17</sup> Espudo undertook to explain on rebuttal what his relations had been with Minski prior to November 20.

*Cynthia Requejo* is the recording secretary for the Local #1010. She testified that she could not find any record of a grievance filed at Inter-Royal on Gaspar Herrero's behalf or any minutes of an executive board meeting where such grievance was discussed.

*Avelina Marquez* began working for the union in October 1978 as an International representative. In February 1980, she was reassigned to work in Los Angeles and serviced Local #1010. She attended the February union meeting when the employees discussed the petition and the contract that Espudo and the Company signed in May 1979. She testified that there was a lot of "hostility" between Espudo and the employees. When the workers stated that California law required collective-bargaining agreements to be translated into Spanish, Espudo replied that there were other laws, such as those prohibiting undocumented workers from working, that were not enforced.

Marquez testified that Herrero, along with Andrade, was very outspoken at the union meetings. Espudo and Fresquez, Marquez said, expressed the view at the union office that Herrero was "behind" the contract protest. Espudo felt particularly betrayed because he had taught Herrero the skills of union organizing. She said Espudo and Fresquez were "extremely angry" at Herrero. She recalled Fresquez had told her with a smile one day that Herrero had been discharged and that if he filed a grievance, they would only "go through the motions" of fighting it.

On the day that Espudo and Fresquez were to go to speak to the Company about the grievance, according to Marquez, Espudo stated he had spoken to the "head guy" at Leggett & Platt and had told him they were coming to discuss the grievance and would be accompanied by Andrade and Herrero. He (Espudo) would appear to "come down real heavy" on the Company but the Company could ignore it as it would only be "a show" for Andrade and Herrero.<sup>18</sup>

After Herrero was fired, approximately mid-April, Herrero filed charges with the International and Local #1010 concerning Espudo's conduct. A letter and petition were sent to the presidents of the local and of the International office. The International president called the local to investigate the charges. A neutral committee was to be organized to hear the charges and render a decision. However, she said that no committee was formed, and no hearing was held. According to Marquez, Espudo showed more concern over the charges filed with the National Labor Relations Board concerning the signing of the contract (later dismissed) because "it would mean the investigation" of "the whole process." She said Espudo was upset when he learned that NLRB attorney Munoz had talked to Fresquez when Espudo was out of town because he (Espudo) had wanted the NLRB to first talk with the Company so the union would know what the NLRB was interested in.<sup>19</sup>

<sup>18</sup> Testifying on rebuttal, Espudo denied telling anyone that he had told DeWilde that the Union would "just going to go through the motions." He said he never mentioned Herrero's grievance around Marquez.

<sup>19</sup> Fresquez denied talking to any NLRB investigator after charges were filed, or telling Marquez that he did.

Espudo told the union's executive board, that the contract had been signed "incorrectly." Fresquez told her, she said, that "they were considering" renegotiation of the contract but that one of the conditions would be that Andrade would be removed as shop steward.<sup>20</sup>

*Charles "Chuck" DeWilde* is plant manager for the Firestone branch of Leggett & Platt. He said he was informed by Brent Mantooth, Herrero's foreman, that Herrero was being terminated for tardiness. DeWilde said he then approved the termination based on Herrero's attendance report.<sup>21</sup> DeWilde said the Company had given prior warnings to Herrero. The second warning, which resulted in a 3-day suspension, was based on Herrero's timecard and attendance records that showed he had been late four times within a 2-week period in early January 1980. DeWilde testified that foremen make the attendance records by entering information from timecards on to the attendance forms. He explained that after he received the grievance he called the Union and told them he would send them a written answer. He did not remember discussing the reasons for the discharge with the Union at that time. He also stated that he received a letter (written in Spanish and translated by a management representative dated April 11, 1980, requesting a meeting to discuss the grievance. DeWilde also stated that, when he called the Union to set up a time, Fresquez seemed surprised and unaware of the letter requesting a meeting.

DeWilde testified that before the meeting he had not discussed the grievance with Espudo. Further, he denied that Espudo told him the Union was only going to go through the motions of defending Herrero at the meeting.

He said that at the meeting Espudo pointed out Herrero's transportation problems and length of service with the Company as well as the fact that Herrero was a good worker. Three or four days after the meeting DeWilde mailed his decision not to reinstate Herrero to the Union.

On cross-examination, DeWilde stated that Mantooth showed him Herrero's attendance records but nothing else. He also stated that the Company's policy allows employees three "tardies" in 1 month, but that it is not a posted rule. As discipline, the Company gives an oral warning for the first infraction, a written warning, then a suspension, and finally, termination.

DeWilde stated that the Union never asked him to review the employment records of other employees. At the request of an NLRB agent, however, he did review the records of two employees, Patricia Delgado and Luis Barquero. DeWilde said their records "did not indicate any attendance problems at all," on cross-examination he acknowledged that Delgado received a warning for tardiness and that Barquero received warnings for "exces-

<sup>20</sup> Marquez testified that before an executive board meeting began Espudo had commented, "in a half-joking manner," with a smile, something like, "what a shame if Andrade would find his car blown up."

On cross-examining Marquez, Respondent pressed the point that Espudo did not allow her to return to work after she had a baby; also, that he had spoken to her about taking time off during her pregnancy. She impressed me, however, as a forthright and credible witness.

<sup>21</sup> DeWilde said the attendance record showed Herrero was tardy five times and absent once in a period of 2 weeks.

sive tardiness." He stated that none of the employees ever complained to him about any timeclock inaccuracies.<sup>22</sup>

*Elizario Fresquez*, financial secretary of Local #1010, said he services Leggett & Platt shops, along with other employers. He has handled grievances filed by employees, including the one filed by Gaspar Herrero. He said shop steward Andrade called him about Herrero's discharge on or about April 2, and he (Fresquez) told Andrade to file a grievance. Fresquez said he did not learn that the grievance had been filed, however, until Chuck DeWilde called him on April 7. Fresquez said he went to the Leggett & Platt plant and picked up a copy of the grievance from DeWilde as he had not been furnished with a copy. Fresquez asked DeWilde why Herrero had been discharged and requested a meeting to discuss it. DeWilde told Fresquez that Herrero had been discharged for "excessive absenteeism and tardiness." Fresquez stated that on the following day DeWilde explained to him and Andrade what led up to the termination. DeWilde said there had been a verbal warning, a written reprimand, and suspension and added:

... Then there was another absenteeism that he was not reprimanded for but he already been warned that the next one he would be terminated.

Fresquez said he asked DeWilde to change the termination to a suspension but DeWilde refused. Herrero wanted Espudo to handle the grievance but, according to Fresquez, Espudo was busy and asked Fresquez to set up another meeting with DeWilde.

Fresquez conducted an investigation, looking at papers in Herrero's personnel file but none of the Company's records (i.e., timecards or attendance sheets). "I talked to Chuck as to what reprimands had been given out and how did he go about it," Fresquez said. Fresquez reported back to Espudo, giving him Herrero's "attendance records, his reprimands and the grievance he filed." Fresquez said he told Espudo that Herrero was beginning to develop the same attendance problems that he had at his prior employment. Fresquez stated that he spoke to Herrero about his record and that Herrero did not deny his lateness, saying only that there were others who had a worse record. Espudo did say, according to Fresquez, that he would take the grievance to arbitration if there was a "fighting chance."

Fresquez said he was present at the executive board meeting around April 15 when it discussed Herrero's grievance and decided against arbitration. Espudo recommended against arbitration on the basis of Herrero's work record at Leggett & Platt, but another member of the executive board made the motion not to go to arbitration. Espudo said he wanted to get together again with DeWilde and try to help Herrero. According to Fresquez:

<sup>22</sup> DeWilde impressed me as defensive, also vague, and equivocal at times. Timecards of Herrero, Delgado, and Barquero were offered in support of the General Counsel's and Charging Party's position that Herrero's discharge for "excessive tardiness" was discriminatory and that a check of the timecards would have revealed that fact.

... Pino felt, "Well, this guy has always helped us out in one way or another. I'll go in there and see if I can reinstate him." So ... Apolinar told Gaspar that we would meet with the Company the following day, which we did.

Fresquez indicated that the executive board discussed the fact that Herrero was getting advice from an outside group, but he claimed that this had not affected the decision not to go to arbitration.

Fresquez testified that he attended the meeting between the Union and the Company and gave this account on direct examination on what was said by Espudo:

Well, when Pino went in there, he sat down with Chuck and Andrade and myself, Gaspar and Brent and Pino started discussing as to the termination, that he felt that the termination was too severe, and he told them that, you know, due to the circumstances, the transportation system that we have here in LA is a lousy one due to the fact that he had to come all the way from downtown LA to South Gate to work. ...

Q. Were there any other things mentioned about the termination, that or any other defenses raised?

A. No. Just the fact that, you know, Apolinar told him, you know, about the transportation and about, you know, trying to get the guy to move closer to work so he could be there on time and Andrade's, you know, promotion that he wanted.

Q. Did he mention anything about the fact that Mr. Herrero was a good worker?

A. Yes.<sup>23</sup>

Fresquez said DeWilde agreed to reconsider the termination of Herrero, indicating, Fresquez thought, that Herrero might be reinstated.

Fresquez indicated that he and Herrero had been friends for some time, from the time they had worked together at Inter-Royal and later up through Herrero's termination in April 1980. Fresquez testified that in 1979 he did run for secretary-treasurer position in the Union in opposition to Katrina Vasquez, who was supported by Herrero. He agreed that the campaign was a heated one, but he asserted that Espudo remained neutral.

In *Vaca, et al. v. Sipes*, 386 U.S. 171, the Supreme Court stated that an exclusive bargaining agent has a statutory duty to represent all unit employees in collective bargaining with an employer and in obtaining enforcement of the resulting collective-bargaining agreement. The Court said:

Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimi-

<sup>23</sup> Espudo later testified that Andrade asked his help in being promoted to a truckdriver's position at Leggett & Platt around the time of Herrero's termination, and he (Espudo) thought he spoke to DeWilde about the truckdriver's job for Andrade on the same day Herrero's grievance was discussed.



nation toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. *Humphrey v. Moore*, 375 U.S. at 342. . . .

"[T]he duty of fair representation can be breached by discriminatory inaction in refusing to process a grievance as well as by active conduct on the part of the union." *Local Union No. 12, United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO v. N.L.R.B.*, 368 F.2d 12 (5th Cir. 1966), citing *Conley v. Gibson*, 355 U.S. 41 (1957). "However, mere negligence or poor judgment is insufficient to establish a breach of such duty for . . . the Act does not guarantee the quality of representation . . ." *Pacific Coast Utilities Services, Inc.*, 238 NLRB 599, 607 (1978), enfd. 638 F.2d 73 (9th Cir. 1980). A "union must necessarily retain a broad degree of discretion in processing individual grievances." *Local 12, United Rubber Workers, supra*. Quoting from the Supreme Court's decision in *Ford Motor Company v. Huffman*, 345 U.S. 330 (1953):

Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject to complete good faith and honesty of purpose in the exercise of its discretion.

A union has broad authority in negotiating and administering agreements, "but it is not without limits." *Hines, et al. v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976). A union, acting as bargaining agent, need not expend its resources pursuing a grievance that is clearly frivolous. *Buffalo Newspaper Guild, The Local 26, American Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.)*, 220 NLRB 79 (1975). But "the finding of a violation turns not on the merit of the grievance but rather on whether the union's disposition of the grievance was perfunctory or motivated by ill will or other invidious considerations." *Glass Bottle Blowers Association of the United States and Canada, AFL-CIO, Local No. 106 (Owens-Illinois, Inc.)*, 240 NLRB 324 (1979).

The record depicts Gaspar Herrero as a conscientious worker who experienced attendance problems primarily due to the fact that he had to depend on public transportation. He was eventually terminated, ostensibly for "excessive tardiness."

The record also reveals that Herrero was a longtime union member who had participated in organizing activities and had become well known to union officials, including Apolinar Espudo, the Union's chief executive. Herrero was involved in the Union's internal politics and had supported a candidate that Espudo has opposed.

Herrero unquestionably aroused the hostility of Respondent's officials, Espudo in particular, when he joined chief shop steward Francisco Andrade and other employees of Leggett & Platt, beginning in November 1979,

in protesting the contract that Espudo had prematurely signed with the Company in the previous May without the knowledge or consent of the union membership. Espudo's comments to the workers as being "illegals" indicate that he held a paternalistic attitude toward them and that he did not want to hear any criticism from them about the union leadership. Herrero's participation in getting signatures on the petition protesting the signing of the contract served to intensify the hostility between Espudo and Herrero.<sup>24</sup>

I am convinced that the Union's failure to process Herrero's grievance to arbitration was so unreasonable and arbitrary that it breached its duty of fair representation and thereby violated Section 8(b)(1)(A) of the Act.

Espudo indicated a vindictive disposition toward Herrero on November 21, 1979, when Espudo visited Leggett & Platt's Firestone branch and referred to Herrero as a troublemaker. Espudo admitted that he saw Herrero's name on the employee's protest petition presented at the February 1980 union meeting. When Herrero was discharged by Leggett & Platt in early April 1980, the opportunity arose for Espudo and the Union to rid itself of the "troublemaker." Espudo assured Herrero's employer that it was not really serious about protesting Herrero's termination—it would just go through the motions at the grievance meeting as a "show" for Herrero and the chief shop steward. Fresquez indicated to Evelina Marquez, while she was still employed by the Union, that he was happy that Herrero was "out now."

Respondent's bad faith is also shown by its failure to make a serious investigation of Herrero's grievance. Although Espudo indicated that Fresquez had investigated Herrero's grievance, it is apparent that no real investigation was ever conducted by Respondent. Fresquez' own testimony indicates, at best, that he was willing to accept the Company's word that Herrero had a "lousy attendance record" that afforded a basis for terminating Herrero. Fresquez preferred, he said, to have Herrero's attendance record judged "on its own merits," claiming he did not wish to "get one member against the other." Such "record" only included notations or entries made by Herrero's supervisor at Leggett & Platt, however, Fresquez was content to accept Leggett & Platt's "record" and readily reported that Herrero was "coming in late" again as he had allegedly done with a previous employer, Inter-Royal. Fresquez concededly made no examination of employees' timecards at Leggett & Platt, Inc., to determine whether Herrero's claim of discriminatory treatment had any validity. Leggett & Platt official DeWilde indicated he could not recall any specific conversation about Herrero prior to the grievance meeting held on April 16.

The record persuades me that the grievance meeting was, indeed, nothing more than a "show" for Herrero and Andrade. I am also persuaded that the Union's ex-

<sup>24</sup> Respondent's contention that it remained on friendly terms with Herrero and that he expressed no "angry words" toward the union management until well after his discharge by Leggett & Platt is contrary to the record. I also reject the notion that Espudo "did not give . . . much attention" to the fact that Herrero's signature was on the petition. Nor do I accept Respondent's suggestion that it was unconcerned "with Herrero's minimal activities among 25 angry, vocal members."



ecutive board decided, as recommended by its chief executive, Apolinar Espudo, against arbitration of Herrero's grievance because of its desire to rid itself of a "troublemaker."<sup>25</sup>

I also find that Espudo went to the Firestone branch of Leggett & Platt on or about November 21, 1979, and threatened to speak to Bob Minski about having Herrero, Lorenzo Heredia, and other "troublemakers"—i.e., Leggett & Platt employees who were protesting the signing of the new contract—discharged. The testimony that Herrero, Andrade, and Heredia gave on this issue was credible and established a violation of Section 8(b)(1)(A) of the Act as alleged in paragraph 12 of the complaint.

Based on the foregoing, I enter the following:

#### CONCLUSIONS OF LAW

1. Respondent Local Union #1010, AFL-CIO, is a labor organization as defined in Section 2(5) of the Act.

2. Leggett & Platt, Inc., is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

3. By its failure to process the grievance of Gaspar Herrero to arbitration, Respondent breached its duty of fair representation and thereby violated Section 8(b)(1)(A) of the Act.

4. By threatening certain employees of Leggett & Platt, Inc., that it would speak to an official of their employer about terminating them, Respondent violated Section 8(b)(1)(A) of the Act.

5. Such violations constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, I shall recommend that Respondent be ordered to cease and desist from such unlawful practices. I further recommend that Respondent be ordered to post an appropriate notice and take affirmative actions in order to effectuate the policies of the Act.

I recommend Respondent be ordered to proceed promptly with the processing of Herrero's grievance through the higher steps in the grievance procedure, including arbitration. It is possible that it can be determined that Leggett & Platt erred in discharging Herrero when it did. It can also be determined that discipline less than discharge would be appropriate. In any event, the uncertainty as to Herrero's grievance is a product of Respondent's unlawful conduct, and it is appropriate to resolve the question in favor of the injured party and against the wrongdoer. Accordingly, for the purpose of determining an appropriate monetary remedy, I presume

<sup>25</sup> I credit Herrero's testimony that Espudo stated during a telephone conversation "shortly after that meeting" with DeWilde (not necessarily on April 22, as Respondent insists) that he would not take Herrero's grievance to arbitration because of the trouble Herrero had caused over the contract. Such testimony supports the allegations of par. 13 of the complaint, but it also supports the finding that Respondent breached its duty of fair representation as alleged in par. 11 of the complaint. A separate finding that Espudo's statement constituted a separate violation of the Act would be cumulative and serve no purpose.

Herrero's grievance would be found to be meritorious and that he would be reinstated. Respondent's backpay liability, of course, is to be limited to the loss Herrero suffered as a result of its failure to fully process Herrero's grievance, and Respondent may be able to prevail upon Leggett & Platt to waive the time limit for processing of grievances. Accordingly, I recommend that Respondent make Herrero whole for any loss of earnings he may have suffered as a result of his discharge by Leggett & Platt from the date of his discharge on April 2, 1980, until the earlier of the following occurs: Respondent secures consideration of Herrero's grievance by Leggett & Platt and thereafter pursues it in good faith and due diligence, or Herrero is reinstated by Leggett & Platt or obtains substantially equivalent employment.<sup>26</sup> See *Henry J. Kaiser Company*, 259 NLRB 1 (1981), and cases cited therein; also *Service Employees International Union, Local No. 579, AFL-CIO (Convicare of Decatur d/b/a Beverly Manor Convalescent Center, et al.)*, 229 NLRB 692 (1977). Backpay is to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). See also *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby make the following recommended:

#### ORDER<sup>27</sup>

The Respondent, Local Union #1010, United Furniture Workers of America, AFL-CIO, Huntington Park, California, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Restraining or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act by failing to process a grievance on a fair basis.

(b) Causing, or threatening to cause, an employer to discharge or otherwise discriminate against employees for engaging in protected concerted activities.

(c) Restraining or coercing employees in any like or related manner.

2. Take the following affirmative action which is necessary to effectuate the purposes of the Act:

(a) Request Leggett & Platt, Inc., to reinstate Gaspar Herrero to his previous position and, if the Company refuses to do so promptly, pursue the remaining stages of

<sup>26</sup> This remedy should be adequate without requiring Respondent, although it has prejudged Herrero's grievance, to pay Herrero's own counsel fee at the arbitration proceeding. See *Local Union Nos. 186, 381, 396, 467, 542, 572, 871, 898, 952 and 982, affiliates of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Frank Matula, Secretary-Treasurer, Local Union 396 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (United Parcel Service)*, 220 NLRB 35 (on remand, 1975), and *Delco Moraine Division, General Motors Corporation*, 237 NLRB 1509 (1978).

<sup>27</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

the grievance procedure, including arbitration, in good faith and with due diligence.

(b) Make Gaspar Herrero whole for any loss of earnings he may have suffered as a result of his discharge by Leggett & Pratt, Inc., from April 2, 1980, until such time as he is reinstated by Leggett & Platt, Inc., or obtain other substantially equivalent employment, or Respondent secures consideration of his grievance by such employer and thereafter pursues it with all due diligence, whichever is sooner, together with interest, to be computed in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Post at its business offices and meeting halls, and at all places where notices to its members and other employees in the bargaining unit are customarily posted,

copies of the attached notice marked "Appendix."<sup>28</sup> Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by an official of Respondent, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material. Respondent shall also sign copies of the notice which the Regional Director shall make available for posting by Leggett & Platt, Inc., if it is willing.

(d) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps has been taken to comply herewith.

<sup>28</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."